

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JEREMY ALLEN RUSSELL,

Plaintiff,

v.

BECKLAHIMER BOWRAINALD,

Defendant.

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Case No. CIV-20-664-HE

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. U.S. District Judge Joe Heaton has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

In accordance with that referral and by an Order dated July 16, 2020, the undersigned found that Plaintiff's filings did not satisfy the pleading requirements. The Plaintiff was ordered to file an "Amended Complaint" in "CIV-20-664-HE". The Amended Complaint was limited to 10 pages and would supersede all other filings and serve as the controlling pleading in this matter. The Court further found that in order for this action to proceed, Plaintiff must either pay the \$400.00 filing fee or be granted leave to proceed without prepayment of fees. Plaintiff had neither paid the filing fee nor submitted a motion for leave to *proceed in forma pauperis*.

Plaintiff was ordered to cure the deficiencies designated no later than August 3, 2020. The Court specifically advised and cautioned Plaintiff that his failure to fully comply

with the Order or to show good cause for any such failure will result—without further warning—in a recommendation to dismiss the action for failure to comply with a court order and court rules. *See* ECF No. 5.

When Plaintiff failed to comply with the Court's Order, the undersigned entered a Show Cause Order. Plaintiff was ordered to fully comply with the Court's previous Orders or to show good cause for any such failure, no later than August 31, 2020. The Plaintiff was again cautioned that failure to comply with a court order and court rules will result in a recommendation to dismiss the action. *See* ECF No. 8. Plaintiff was provided with the necessary documents to assist him in complying with the Court's Orders. *See* Staff notes dated 7/16/2020 and 8/14/2020.

On August 25, 2020, Plaintiff filed a document utilizing a Petition Under 28 U.S.C. 2254 for Writ of Habeas Corpus by a Person in State Custody form. This document has been entered as an "Amended Complaint" with attachment "Motion to Setale." *See* ECF No. 9, 9-1. But this filing fails to meet the specific requirements of the Court's Order. In addition, Plaintiff has failed to respond to the Court's requirements as to payment of the filing fee or making application to proceed *in forma pauperis*.

Therefore, the undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules,

and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

RECOMMENDATION

Based on the foregoing findings, it is recommended that this action be **DISMISSED without prejudice** for Plaintiff's failure to comply with this Court's orders. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **September 28, 2020** in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on September 11, 2020.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE